

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Case No. 02-43540

R & D CONTRACTING, LLC,

Chapter 11

Debtor.

Judge Thomas J. Tucker

R&D CONTRACTING, L.L.C.,

Plaintiff,

Adversary Pro. No. 02-5127

v.

JENKINS CONSTRUCTION, INC.,

Defendant.

**ORDER GRANTING IN PART, AND DENYING IN PART, DEFENDANT’S MOTION
TO EXTEND TIME (DOCKET # 140)**

This case is before the Court on Defendant Jenkins Construction, Inc.’s “Motion for Extension of Time to File Motion for Rehearing Pursuant to Fed.R.Bankr.P. 8015,” filed on April 24, 2008 (Docket # 140).¹ On this date, the Court has denied the underlying motion for rehearing, by separate order.

The Court construes Jenkins’s motion for extension of time as a motion seeking relief of one or more of the following kinds: (1) under Fed.R.Bankr.P. 9006(b)(1), an enlargement of time to file a motion under Fed.R.Bankr.P. 7052, 9023, or 9024; and (2) under Fed.R.Bankr.P. 8002(c), an extension of the deadline for filing a notice of appeal from the Court’s April 4, 2008

¹ This April 24 motion amended and superseded the motion by the same name that was filed by Jenkins on April 23, 2008 (Docket # 139).

Judgment (Docket # 135).²

The Court must deny the first of these forms of relief, because Fed.R.Bankr.P. 9006(b)(2) expressly precludes it. That rule states that “[t]he Court may not enlarge the time for taking action under Rules 1007(d), 2003(a) and (d), 7052, 9023, and 9024.”

The Court will, however, grant the second form of relief requested. If and to the extent Defendant Jenkins’s extension motion was not filed with the 10-day time for appeal, the Court finds that the motion was filed within the 20-day period following expiration of the 10-day time for appeal, Fed.R.Bankr.P. 8002(c)(2). Further, Jenkins has made a showing of “excusable neglect” for not filing the motion for extension on or before April 14, 2008, *id.*, and for not filing a notice of appeal on or before April 14, 2008. The Conclusion (at p. 28) of the Court’s Amended Trial Opinion filed April 7, 2008 created an expectation on the part of Jenkins’s counsel that an amended judgment would be entered that day or shortly thereafter, amending and superseding the April 4, 2008 Judgment. That expectation was not unreasonable under the circumstances.³

For these reasons,

IT IS ORDERED that Defendant’s “Motion for Extension of Time to File Motion for Rehearing Pursuant to Fed.R.Bankr.P. 8015,” filed on April 24, 2008 (Docket # 140) is granted to the extent of the relief provided by this Order, and otherwise is denied.

IT IS FURTHER ORDERED that the deadline for Defendant and for Plaintiff to file a

² Jenkins requested this second form of relief in paragraph 10 of its motion.

³ To avoid any further uncertainty on the part of counsel, the Court is entering an amended judgment today.

notice of appeal from the Court's April 4, 2008 Judgment is extended under Fed.R.Bankr.P.
8002(c)(1) and (c)(2), to and including **May 8, 2008.**

Signed on April 28, 2008

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge